

CUSTOM DYNAMICS, LLC,)
)
 Plaintiff,)
)
 v.) **COMPLAINT**
)
 EBAY, INC. and JOHN DOES 1-4,)
)
 Defendants.)
)

PARTIES

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5. Defendant John Doe 1 uses the seller handle “supermotopartsfactory,” and is assigned eBay seller number 49647. John Doe 1 maintains the listing at http://www.ebay.com/itm/Custom-Dynamics-White-Amber-1157-Bullet-Front-LED-Turn-Signal-Inserts-For-Harley/332129331294?_trksid=p2047675.c100005.m1851&_trkparms=aid%3D222007%26algo%3DSIC.MBE%26ao%3D2%26asc%3D41402%26meid%3D006dec1f0be447a2ba2da03b98d9f3cd%26pid%3D100005%26rk%3D4%26rkt%3D6%26sd%3D142214387300, identified by eBay as Listing No. [332129331294](http://www.ebay.com/itm/Custom-Dynamics-White-Amber-1157-Bullet-Front-LED-Turn-Signal-Inserts-For-Harley/332129331294?_trksid=p2047675.c100005.m1851&_trkparms=aid%3D222007%26algo%3DSIC.MBE%26ao%3D2%26asc%3D41402%26meid%3D006dec1f0be447a2ba2da03b98d9f3cd%26pid%3D100005%26rk%3D4%26rkt%3D6%26sd%3D142214387300). According to eBay’s website, this seller is based in Upland, California.

6. Defendant John Doe 2 uses the seller handle “xfwlkj,” and is assigned eBay seller number 63955. John Doe 2 maintains the listing at http://www.ebay.com/itm/Motorcycle-2-Bullet-Style-1157-Turn-Signal-LED-Inserts-For-Harley-Softail-Dyna/182458325259?_trksid=p2047675.c100005.m1851&_trkparms=aid%3D222007%26algo%3DSIC.MBE%26ao%3D2%26asc%3D41402%26meid%3D006dec1f0be447a2ba2da03b98d9f3cd%26pid%3D100005%26rk%3D6%26rkt%3D6%26sd%3D14, identified by eBay as Listing No. [182458325259](http://www.ebay.com/itm/Motorcycle-2-Bullet-Style-1157-Turn-Signal-LED-Inserts-For-Harley-Softail-Dyna/182458325259?_trksid=p2047675.c100005.m1851&_trkparms=aid%3D222007%26algo%3DSIC.MBE%26ao%3D2%26asc%3D41402%26meid%3D006dec1f0be447a2ba2da03b98d9f3cd%26pid%3D100005%26rk%3D6%26rkt%3D6%26sd%3D14). According to eBay’s website, this seller is based in China with an American location in Upland, California.

7. Defendant John Doe 3 uses the seller handle “rrasow,” and is assigned the eBay seller number 20513. John Doe 3 maintains the listing at http://www.ebay.com/itm/LED-Turn-Signal-Inserts-2-BULLET-Style-GEN-200-AW-1157-For-Harley-Davidson-New/142214387300?_trksid=p2047675.c100005.m1851&_trkparms=aid%3D222007%26algo%3DSIC.MBE%26ao%3D2%26asc%3D41402%26meid%3D47e24f126a2e4b2d8b476863fdcc894

[3%26pid%3D100005%26rk%3D5%26rkt%3D6%26sd%3D192082899195](#), identified by eBay as Listing No. [142214387300](#). According to eBay's website, this seller is based in China.

8. Defendant John Doe 4 uses the seller handle "motomart11," and is assigned eBay seller number 57895. John Doe 4 maintains the listing at http://www.ebay.com/itm/Motorcycle-White-Amber-LED-Inserts-For-Harley-Bullet-Style-Turn-Signal-Brand-New/322361724333?_trksid=p2047675.c100005.m1851&_trkparms=aid%3D222007%26algo%3DSIC.MBE%26ao%3D2%26asc%3D41402%26meid%3D8922a2c1691b47cbab53b0a2dd2ed6ba%26pid%3D100005%26rk%3D5%26rkt%3D6%26mehot%3Dpp%26sd%3D142214387300, identified by eBay as Listing No. [322361724333](#). According to eBay's website, this seller is based in China.

9. Plaintiff anticipates a need to engage in discovery of eBay to learn the identities of John Does 1-4, and plans to amend their complaint with those identities at the appropriate time.

JURISDICTION AND VENUE

10. This case is brought pursuant to the Lanham Act, 15 U.S.C. § 1052, *et seq.*, and the Copyright Act, 17 U.S.C. 101 *et seq.* This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The state court claims herein arise from the same nucleus of operative facts as the federal claims. As such, the Court has jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

11. Defendants advertise counterfeit and infringing products and offer them for sale in this judicial district.

12. Defendants are knowingly copying the federally registered trademarks and the copyright of Plaintiff, which is located in this judicial district.

13. This Court has personal jurisdiction over Defendants and venue is proper in this district.

FACTS

14. Custom Dynamics is a leading manufacturer and seller of motorcycle lights worldwide.

15. Custom Dynamics markets and sells its products through a variety of channels, to include:

- a. through a large network of Dealers and Installers.
- b. directly to consumers through Custom Dynamics' website at www.customdynamics.com.
- c. internationally, to include through the international Drag Specialties catalogues and dealer network.
- d. directly to consumers through Custom Dynamics' eBay store.
- e. at motorcycle rallies and shows throughout the United States.
- f. a showroom and store where it sells directly to customers.

16. Custom Dynamics interacts with its fans and supporters through social media and maintains pages on popular social media sites, such as Facebook, YouTube, and Twitter.

Custom Dynamics' Facebook page is "liked" by tens of thousands of people.

17. Custom Dynamics owns incontestable U.S. Trademark No. 3,082,179 for CUSTOM DYNAMICS. A true and accurate copy of the registration is attached hereto as Exhibit A. Custom Dynamics often displays its CUSTOM DYNAMICS mark as part of a unique logo designed and owned by Custom Dynamics and regularly gives notice that the mark is registered by using the registration symbol ®.

18. Custom Dynamics often uses its registered trademark as part of its Custom Dynamics logo. The Custom Dynamics' logo is used on Custom Dynamics' webpage, social media accounts, packaging, and advertising. A copy of that logo is shown below:



(the "Custom Dynamics Logo").

19. Custom Dynamics owns incontestable U.S. Trademark No. 3,630,671 for EVERYTHING TO LIGHT UP YOUR RIDE! A true and accurate copy of the registration is attached hereto as Exhibit B. Custom Dynamics often displays its EVERYTHING TO LIGHT UP YOUR RIDE! mark on its product packaging, advertisements, website, and social media channels. Custom Dynamics regularly gives notice that the mark is registered by using the registration symbol ®.

20. Custom Dynamics owns numerous copyright registrations for its high quality images of its products. Included among those, Custom Dynamics owns the copyright in the "Turn Signal Image" shown below.



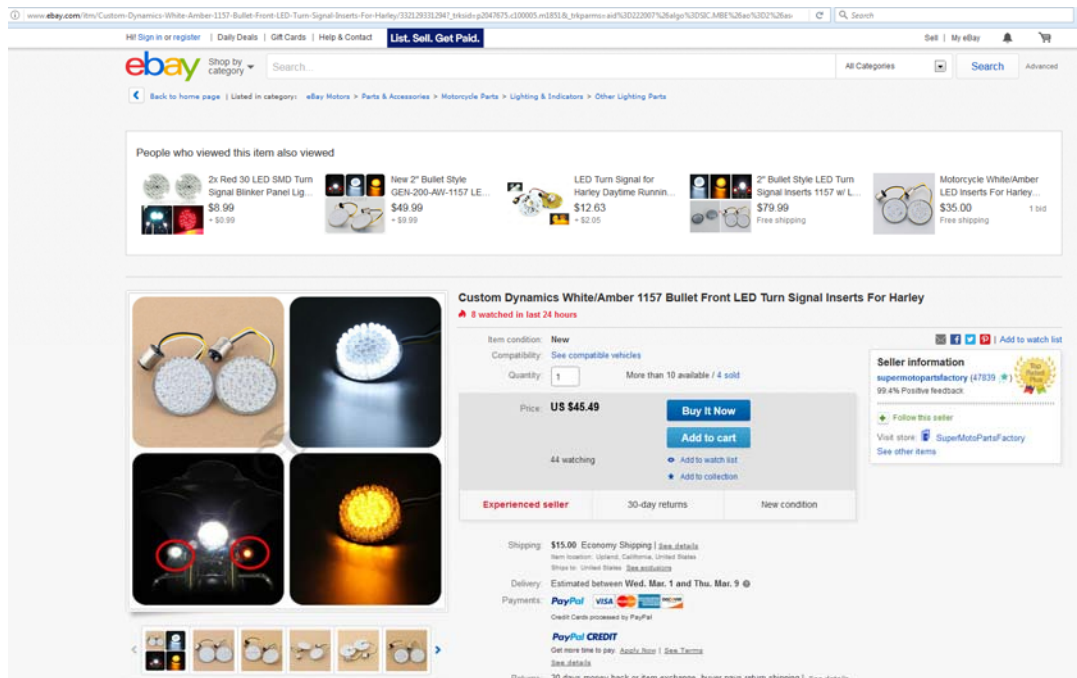
21. Custom Dynamics has applied to register this copyright with the U.S. Copyright Office. As part of that application, Custom Dynamics has submitted the application, deposit material, and required fees. That application, Application no. 1-4271396031, is currently pending.

DEFENDANT'S BAD ACTS

22. Defendant eBay is an ecommerce corporation shopping site.

23. Custom Dynamics received complaints from customers about eBay listings purporting to show Custom Dynamics products. Custom Dynamics investigated these complaints and found four listings that include Custom Dynamics' Turn Signal Image being used to advertise and offer for sale non-Custom Dynamics products on eBay. In particular:

- a. John Doe 1's Listing No. 332129331294 (hereafter "'294 Listing'") uses the Turn Signal photo. The '294 Listing is shown below:



A comparison of the Turn Signal Image and the Turn Signal Image as used in the '294 Listing is shown below. Custom Dynamics' photo is on the left, and the

photo from the ‘294 Listing is on the right. As is seen in the photos, the only difference is that the photo from the ‘294 Listing added red circles around the turn signals on the motorcycle shown in the image to identify the purported product the Listing claims to sell.

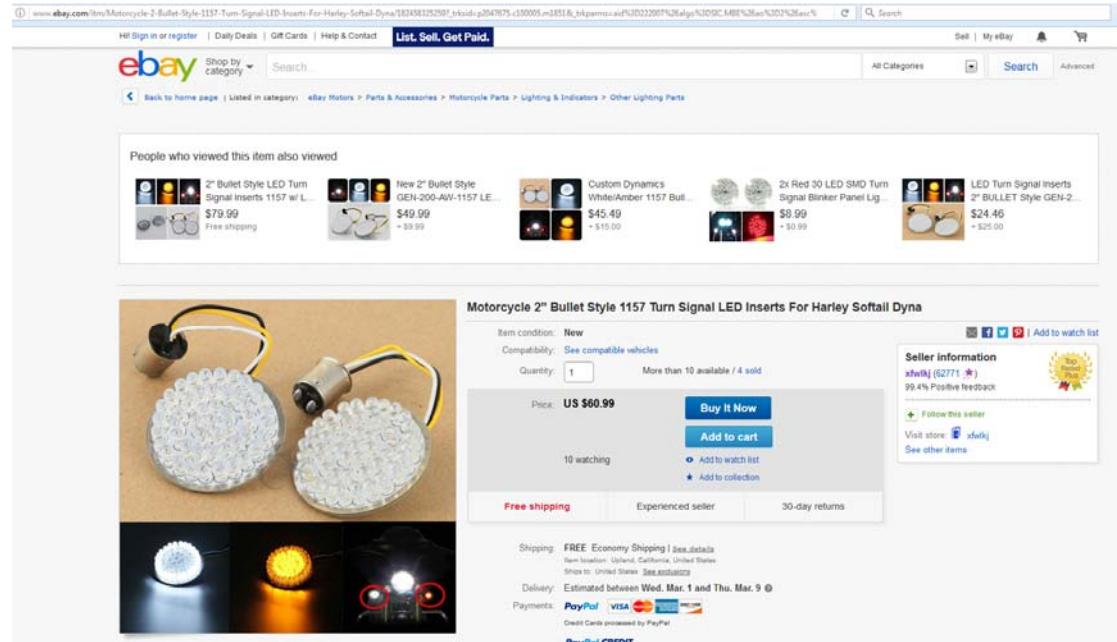


Copyrighted Image



Infringing Image

- b. John Doe 2’s eBay Listing No. 182458325259, (hereafter “‘259 Listing”), uses the Turn Signal photo. The ‘259 Listing is shown below:



A comparison of the Turn Signal Image and the Turn Signal Image as used in the ‘259 Listing is shown below. Custom Dynamics’ photo is on the left, and the

photo from the '259 Listing is on the right. As is seen in the photos, the only difference is that the photo from the '259 Listing added red circles around the turn signals on the motorcycle shown in the image to identify the purported product the Listing claims to sell.



- c. John Doe 3's Listing No. 142214387300 (hereafter "'300 Listing'") uses the Turn Signal photo. The '2300 Listing is shown below:

A comparison of the Turn Signal Image and the Turn Signal Image as used in the '300 Listing is shown below. Custom Dynamics' photo is on the left, and the

photo from the '300 Listing is on the right. As is seen in the photos, the only difference is that the photo from the '300 Listing is a closer, cropped version of the Turn Signal Image and the photo added red circles around the turn signals on the motorcycle shown in the image to identify the purported product the Listing claims to sell.



Copyrighted Image



Infringing Image

- d. John Doe 4's Listing No. 322361724333 (hereafter "'333 Listing'"), uses the Turn Signal photo. The '333 Listing is shown below:

www.ebay.com/itm/Motorcycle-White-Amber-LED-Inserts-For-Harley-Bullet-Style-Turn-Signal-Brand-New/322361724333?trk=hp_sponsored... Search

Sign in or register | Daily Deals | Gift Cards | Help & Contact | List, Sell, Get Paid. | Sell | My eBay | Cart

Shop by category | Search | All Categories | Search | Advanced

Back to home page | Listed in category: eBay Motors > Parts & Accessories > Motorcycle Parts > Lighting & Indicators > Other Lighting Parts

SAVE ON MARKDOWNS See all eligible items

People who viewed this item also viewed

<p>Motorcycle White/Amber LED Inserts For Harley... \$35.00 Free shipping 1 bid</p>	<p>Motorcycle White/Amber LED Inserts For Harley... \$39.85 Free shipping</p>	<p>2x Red 30 LED SMD Turn Signal Binker Panel Lig... \$8.99 +\$0.99</p>	<p>White/Amber LED Turn Signal Inserts 2" BULLE... \$39.99 +\$14.99</p>	<p>SPONSORED Motorcycle Motorbike B... \$27.99 Free shipping</p>
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Motorcycle White/Amber LED Inserts For Harley Bullet Style Turn Signal Brand New
2 viewed per hour

Item condition: New
Compatibility: See compatible vehicles
Quantity: 1 9 available 33 sold / See feedback

Was: US \$31.00
You save: \$7.75 (25% off)
Price: US \$23.25

65 watching

Buy It Now
Add to cart
Add to watch list
Add to collection

100% buyer satisfaction 33 sold More than 78% sold

Shipping: \$22.00 ePacket delivery from China | See details
See details about international shipping here
Item location: Guang Zhou, China

Seller information
motomart11 (56732) 99.4% Positive feedback
Follow this seller
Visit store: motomart11
See other items

A comparison of the Turn Signal Image and the Turn Signal Image as used in the ‘333 Listing is shown below. Custom Dynamics’ photo is on the left, and the photo from the ‘300 Listing is on the right. As is seen in the photos, the only difference is that the photo from the ‘333 Listing added red circles around the turn signals on the motorcycle shown in the image to identify the purported product the Listing claims to sell.



Copyrighted Image



Infringing Image

24. None of the listings had permission from Custom Dynamics’ to use Custom Dynamics’ copyrighted Turn Signal Image.

25. In addition to infringing the Turn Signal Image, the ‘294 Listing advertised its product as a “Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley.” Larger copies of this language on the ‘194 Listing is shown below:

Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts For Harley
 🔥 71 viewed per day

Item condition: **New**
 Compatibility: [See compatible vehicles](#)
 Quantity: More than 10 available / 28 sold

Price: **US \$45.49** [Buy It Now](#)
[Add to cart](#)
 133 watching [Add to watch list](#)
[Add to collection](#)

28 sold 18 inquiries Experienced seller

Shipping: **\$25.00** Economy Shipping | [See details](#)
 Item location: Upland, California, United States
 Ships to: United States [See exclusions](#)

Delivery: Estimated between **Fri, Apr. 7** and **Sat, Apr. 15** 📅

Payments: [PayPal](#) [VISA](#) [MasterCard](#) [Discover](#)

Seller information
 supermotopartsfactory (49647) ⭐
 99.4% Positive feedback
[Follow this seller](#)
 Visit store: [SuperMotoPartsFactory](#)
[See other items](#)

Top Rated Plus

Despite claiming it was selling “Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley,” John Doe 1’s ‘294 Listing is not selling actual CUSTOM DYNAMICS products and does not have permission from Custom Dynamics to use the CUSTOM DYNAMICS name.

26. eBay claims that intellectual property rights owners may have infringing material removed from eBay’s website through the eBay Verified Rights Owner (VeRO) program. To that end, on February 21, 2017, Custom Dynamics submitted four Notices of Claimed Infringement (“NOCI”) to the VeRO program for the ‘259 Listing, ‘333 Listing, ‘300 Listing, and ‘294 Listing. The NOCI’s cited, inter alia, eBay’s Reason Code 1.1’ “Item(s) is a counterfeit product which infringes a trademark,” and Reason Code 4.2, “Listing(s) contains unlawful copy of copyrighted image.”

27. On February 22, 2017, eBay responded to the NOCI forms submitted by Custom Dynamics, claiming Custom Dynamics’ concerns were not clearly articulated. eBay requested Custom Dynamics provide eBay with a more detailed explanation of the bad acts about which Custom Dynamics was complaining.

28. On February 24, 2017 Custom Dynamics replied to eBay’s request for additional information. In a four page, single spaced letter, Custom Dynamics’ attorneys set forth in great detail how each of the four listings violated Custom Dynamics’ rights. In particular, Custom Dynamics provided information explaining how none of the four listings had permission to use Custom Dynamics’ copyrighted image, and how the use of the images amounted to copyright infringement under the Copyright Act, and false advertisement, and passing off under the

Lanham Act. Custom Dynamics further explained that the '294 listing was infringing Custom Dynamics' trademark and engaging in counterfeiting. The letter included screen shots of each offending listing, with the Listing Number hyperlinked so that eBay could easily go to the offending listings. A copy of that letter is attached hereto as Exhibit C.

29. Shortly thereafter, a Custom Dynamics' customer contacted Custom Dynamics about a product the customer purchased from John Doe 1's '294 Listing on eBay. The customer communicated to Custom Dynamics that he believed the product to be a genuine Custom Dynamics product because the listing identified the product as a CUSTOM DYNAMICS. The customer stated he purchased the product from the eBay store and when the product arrived, the product's packaging was branded with Custom Dynamics' federally registered CUSTOM DYNAMICS and EVERYTHING TO LIGHT UP YOUR RIDE! trademarks. The product packaging also incorporated Custom Dynamics' logo.

30. The customer sent Custom Dynamics images of the product and the packaging. When Custom Dynamics saw the image of the product, Custom Dynamics knew it was an inferior counterfeit. The product the customer purchased is missing a requisite micro controller on the back of the unit. Actual Custom Dynamics' products include the micro controller. The image of the counterfeit product is shown below, left, and the packaging for the counterfeit product is shown below, right.



31. Custom Dynamics followed-up with eBay and provided eBay with a three page letter, detailing the new information Custom Dynamics discovered. As part of that letter, Custom Dynamics explained how eBay Item No. '294 was engaging in counterfeiting by selling knock-off goods under Custom Dynamics' trademarks and using Custom Dynamics' logo on the packaging. Custom Dynamics included images of the packaging with the counterfeit marks and the inferior lighting products. A true and accurate copy of that letter is attached hereto as Exhibit D.

32. On March 14, 2017, eBay responded to the documentation submitted by Custom Dynamics by claiming eBay could not help Custom Dynamics because Custom Dynamics did not submit a NOCI. A true and accurate copy of eBay's response is attached hereto as Exhibit E. As explained above, Custom Dynamics had already submitted NOCIs for each of the listings violating Custom Dynamics' intellectual property rights.

33. On March 15, 2017, Custom Dynamics' attorneys responded to the March 14th email, explaining Custom Dynamics previously submitted not only a NOCI form for each violating listing, but also two detailed letters explaining the intellectual property violations that were occurring at eBay's request for additional information in response to Custom Dynamics'

NOCIs. The March 15th response email included attached copies of each NOCI form and both detailed letters to eBay. A true and accurate copy of Custom Dynamics' response, without the attachments, is attached hereto as Exhibit F.

34. On March 20, 2017, eBay responded and claimed that, after reviewing all correspondence from Custom Dynamics, eBay could not remove any of the listings because Custom Dynamics did not limit the reasons for removal to one rational. According to eBay, Custom Dynamics needed to provide "clarification" of its claim by selecting only "the *single most* appropriate reason" for removal. A true and accurate copy of eBay's response, without the attachments, is attached hereto as Exhibit G.

35. Although Custom Dynamics had now notified eBay of the copyright infringement and counterfeiting on multiple occasions, Custom Dynamics again tried to work with eBay. Custom Dynamics provided eBay with a four page letter, identifying a "single most appropriate reason" for removal of the listings. That letter further included a side by side comparison of the copyrighted images at issue and the infringing copies. A true and accurate copy of Custom Dynamic response is attached hereto as Exhibit H.

36. On Marcy 27, 2017, eBay responded to Custom Dynamics and refused to remove the '294 listing. eBay claimed that counterfeiting was only for items that have "your trademark on the actual product or packaging," despite Custom Dynamics having already provided to eBay photographs showing *two* federally registered Custom Dynamics' trademarks on the counterfeit product packaging for an item purchased through the '294 Listing. eBay refused to remove the listings that were infringing Custom Dynamics' copyrighted Turn Signal Image, claiming it needed "the location from where the images were taken" in order to "investigate the matter further." A true and accurate copy of eBay's response, without the attachments, is attached

hereto as Exhibit I. eBay's claim was made despite each of Custom Dynamics' letters including screen shots (showing the URLs for where the infringing images were taken from the offending listings), and each Listing Number identified in those letters being hyperlinked to the applicable offending listings. eBay had already been provided this information multiple times.

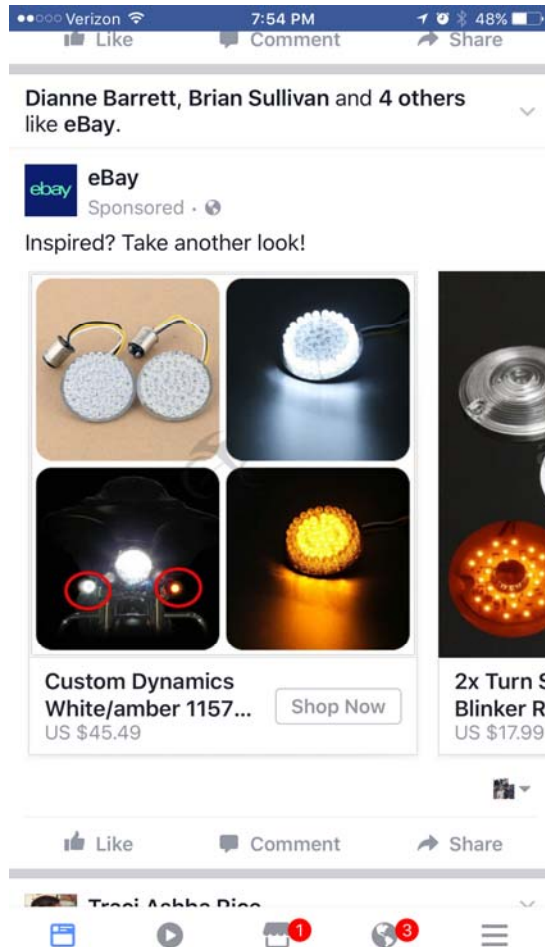
Nonetheless, eBay continued its failure to remove *any* of the offending listings.

37. To date, each of the offending listings is still active on eBay. Each of the offending listings continues to violate Custom Dynamics' rights, as described herein.

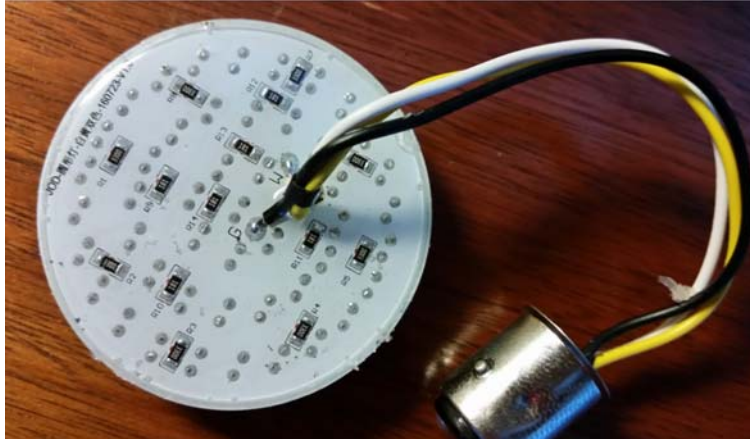
38. eBay has specific knowledge that the '294 listing is counterfeiting Custom Dynamics' goods and specific knowledge that the '294 listing, '300 listing, '259 listing, and '333 listing are violating Custom Dynamics' copyright.

39. Despite the specific knowledge of the '294 listing, '300 listing, '259 listing, and '333 listing violating Custom Dynamics' intellectual property, eBay turned and continues to turn a blind eye to these violations.

40. On March 29, 2017, Custom Dynamics was using Facebook in the usual course of its business when Facebook displayed an advertisement for eBay. The advertisement included the '294 listing with the counterfeit lights. A copy of that advertisement is shown below:



41. Custom Dynamics ordered lights from the '294 listing. Although the listing continued to claim it was selling CUSTOM DYNAMICS products, Custom Dynamics received an inferior, knock-off product. Like the product received by the customer who contacted Custom Dynamics, the product shipped to Custom Dynamics did not include the requisite micro controller. An image of the product Custom Dynamics received is shown below:



42. Custom Dynamics is not the only company whose notifications eBay is intentionally ignoring and thwarting. Upon information and belief, based on a party and subject matter search on PACER, eBay has been sued for trademark infringement approximately 50 times since 2010.

COUNT I
Counterfeiting Against John Doe 1
15 U.S.C. § 1114

43. Custom Dynamics realleges the preceding paragraphs.

44. Plaintiff owns incontestable U.S. Trademark No. 3,082,179 for CUSTOM DYNAMICS®. This mark is registered on the principal register in the United States Patent and Trademark Office for retail services for motorcycle accessories and online retail store services featuring motorcycle accessories.

45. Plaintiff owns incontestable U.S. Trademark Registration No. 3,630,671 for EVERYTHING TO LIGHT UP YOUR RIDE!(R) This mark is registered on the principal register in the United States Patent and Trademark Office for retail services featuring motorcycle accessories, mail order services featuring motorcycle accessories, and online retail services featuring motorcycle accessories.

46. John Doe 1 advertises and offers for sale CUSTOM DYNAMICS® products on eBay. One such offering is found at the '294 listing, where John Doe 1 advertises "Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley."

47. John Doe 1's '294 listing allows users to purchase John Doe 1's products to allow a user to purchase the offered "Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley" through the eBay platform.

48. Upon receiving orders for "Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley," John Doe 1 ships a counterfeit product in packaging that uses the CUSTOM DYNAMICS® and EVERYTHING TO LIGHT UP YOUR RIDE! ® trademarks, as well as the Custom Dynamics stylized logo, to the customer. Customers who purchase the "Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley" offered by John Doe 1 do not receive a CUSTOM DYNAMICS® product, but instead receive an inferior counterfeit.

49. John Doe 1 reproduced, counterfeited, copied, and/or colorably imitated the CUSTOM DYNAMICS® and EVERYTHING TO LIGHT UP YOUR RIDE! ® registered trademarks and applied the same to, at least, packages and advertisements intended to be used in commerce or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion or to cause mistake or to deceive.

50. John Doe 1 acted with knowledge and with intent that John Doe 1's acts would cause confusion, cause mistake, or deceive consumers into believing they were ordering and receiving CUSTOM DYNAMICS® products.

51. Customers were, in fact, deceived by John Doe 1's counterfeiting.

52. John Doe 1 engaged in counterfeiting under 15 U.S.C. § 1114.

COUNT II
Infringement of a Registered Trademark Against John Doe 1
15 U.S.C. § 1114

53. Custom Dynamics realleges the preceding paragraphs.

54. Plaintiff owns incontestable U.S. Trademark No. 3,082,179 for CUSTOM DYNAMICS®.

55. Plaintiff owns incontestable U.S. Trademark No. 3,630,671 for EVERYTHING TO LIGHT UP YOUR RIDE! ®.

56. John Doe 1 uses CUSTOM DYNAMICS® on its eBay listings, to include the ‘294 listing, to advertise and sell John Doe 1’s inferior motorcycle lighting product.

57. John Doe 1 uses CUSTOM DYNAMICS® and EVERYTHING TO LIGHT UP YOUR RIDE! ® on its packaging for the motorcycle lighting products customers purchase through the ‘294 listing on eBay.

58. John Doe 1 is offering retail services and online retail services of motorcycle lighting products under CUSTOM DYNAMICS® and EVERYTHING TO LIGHT UP YOUR RIDE! ®.

59. John Doe 1 is offering identical services as Custom Dynamics, under identical copies of Custom Dynamics’ registered trademarks.

60. John Doe 1 is offering his infringing goods and services through the same channels as Custom Dynamics, to include the Internet.

61. John Doe 1 advertises his infringing goods and services through the same channels as Custom Dynamics, to include the Internet and social media platforms.

62. John Doe 1 knew of Custom Dynamics' rights and intended to confuse consumers into believing that John Doe 1's inferior lighting products were CUSTOM DYNAMICS® products.

63. There is a likelihood that consumers will be confused due to John Doe 1's use of the CUSTOM DYNAMICS® and EVERYTHING TO LIGHT UP YOUR RIDE! ® trademarks.

64. John Doe 1 is infringing Custom Dynamics' rights in Custom Dynamics' registered trademarks.

COUNT III
Infringement of a Common Law Trademark Against John Doe 1
15 U.S.C. § 1125(a)

65. Custom Dynamics realleges the preceding paragraphs.

66. Custom Dynamics owns common law rights in the Custom Dynamics Stylized Logo:



67. Custom Dynamics stylized logo is utilized on its product packaging, website, social media pages, and advertisements. It is widely known and recognized as indicating Custom Dynamics as the source of the goods bearing this stylized logo.

68. John Doe 1 uses the Custom Dynamics Stylized Logo on the packaging of its inferior motorcycle light products. A comparison of how Custom Dynamics uses its stylized logo and how John Doe 1 uses the Custom Dynamics Stylized Logo on packaging is shown

below, with the actual Custom Dynamics use on the left and John Doe 1's infringing use on the right:



Custom Dynamics



John Doe 1

69. John Doe 1 is offering highly related goods and services under the Custom Dynamics Stylized Logo as those offered by Custom Dynamics under the Custom Dynamics Stylized Logo.

70. John Doe 1 is offering his infringing goods and services through the same channels as Custom Dynamics, to include the Internet.

71. John Doe 1 advertises his infringing goods and services through the same channels as Custom Dynamics, to include the Internet and social media platforms.

72. John Doe 1 knew of Custom Dynamics' rights and intended to confuse consumers into believing that John Doe 1's inferior lighting products were Custom Dynamics' products.

73. There is a likelihood that consumers will be confused due to John Doe 1's use of the Custom Dynamics Stylized Logo.

74. John Doe 1 is infringing Custom Dynamics' common law rights in the Custom Dynamics stylized logo.

COUNT IV
Contributory Trademark Infringement Against eBay
15 U.S.C. § 1114

75. Custom Dynamics realleges the preceding paragraphs.

76. John Doe 1 is engaging in trademark infringement and counterfeiting, in violation of the Lanham Act, through eBay. In particular, the ‘294 eBay listing is offering “Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley” for sale. Customers who purchase a “Custom Dynamics White/Amber 1157 Bullet Front LED Turn Signal Inserts for Harley” through the ‘294 eBay listing are shipped a product that includes the CUSTOM DYNAMICS® and EVERYTHING TO LIGHT UP YOUR RIDE! ® trademarks. The products provided to these customers, however, are not Custom Dynamics’ products. Instead, they are inferior counterfeit products.

77. eBay was notified that the ‘294 listing was engaging in counterfeiting on numerous occasions. Custom Dynamics submitted a NOCI form and wrote several detailed letters explaining that the ‘294 listing was selling counterfeit Custom Dynamics goods. Custom Dynamics’ correspondence to eBay included images showing the counterfeit marks on product packaging and explaining how consumers were receiving counterfeit goods through the eBay listing.

78. Custom Dynamics’ request that eBay remove the ‘294 listing was a request to remove a confirmed, known counterfeit listing. If eBay had removed the listing as requested, no legitimate business would have been terminated.

79. Although eBay had actual knowledge of the counterfeiting being performed by John Doe 1 through the ‘294 listing, eBay refused to remove that listing.

80. With full knowledge that the ‘294 listing is engaging in counterfeiting and infringing Custom Dynamics’ trademark rights, eBay continues to provide its service to the ‘294 listing and maintain the ‘294 listing.

81. Consumers have been actually confused by the '294 listing and purchased counterfeit products through the '294 listing and eBay, believing they were receiving Custom Dynamics products. Instead, the consumers received knock-offs.

82. eBay is engaging in contributory trademark infringement.

COUNT V
Copyright Infringement Against John Does 1-4
17 U.S.C. § 501

83. Custom Dynamics realleges the preceding paragraphs.

84. Custom Dynamics owns the rights in the Turn Signal Image.

85. Custom Dynamics applied to register the Turn Signal Image with the Copyright Office. In doing so, Custom Dynamics submitted a completed application and deposit material, and paid all applicable fees.

86. John Doe 1 copied and displayed the Turn Signal Image on eBay listing '294.

87. John Doe 1 does not have permission to use the Turn Signal Image.

88. John Doe 2 copied and displayed the Turn Signal Image on eBay listing '259.

89. John Doe 2 does not have permission to use the Turn Signal Image.

90. John Doe 3 copied and displayed the Turn Signal Image on eBay listing '300.

91. John Doe 3 does not have permission to use the Turn Signal Image.

92. John Doe 4 copied and displayed the Turn Signal Image on eBay listing '333.

93. John Doe 4 does not have permission to use the Turn Signal Image.

94. John Does 1-4 are infringing Custom Dynamics' copyrighted Turn Signal Image.

95. Upon information and belief, John Does 1-4 infringement is knowing, intentional, and willful.

COUNT VI
Contributory Copyright Infringement against eBay
17 U.S.C. § 501

96. Custom Dynamics realleges the preceding paragraphs.

97. John Does 1-4 are infringing the Turn Signal Image through their respective eBay listings.

98. Custom Dynamics provided actual notice to eBay on multiple occasions that John Does 1-4 are infringing the Turn Signal Image through their respective eBay listings. As a result, eBay has specific knowledge of the infringement John Does 1-4 are perpetrating through eBay.

99. eBay has control over the listings on eBay and is capable of stopping the infringement perpetrated by John Does 1-4 on eBay.

100. Despite having knowledge of the infringement and the ability to stop the infringement, eBay has not removed the infringing images.

101. eBay is engaging in contributory copyright infringement.

COUNT VII
Passing Off against John Does 1-4
15 U.S.C. § 1125(a)

102. Custom Dynamics realleges the preceding paragraphs.

103. John Does 1-4 use in commerce the Turn Signal Image in connection with offering goods and services.

104. By using the Turn Signal Image in their product listings and product advertisements, John Does 1-4 are representing to consumers that the Turn Signal Image shows the product consumers are purchasing from John Does 1-4.

105. Consumers viewing John Does 1-4's eBay listings reasonably believe they are purchasing the product displayed in these listings.

106. When a consumer orders a product through eBay from John Does 1-4, the consumer is not receiving the Custom Dynamics product shown in the Turn Signal Image on John Does 1-4's eBay listings. Instead, the consumer receives an inferior knock-off lighting product.

107. The use of the Turn Signal Image by John Does 1-4 is likely to cause confusion or to cause mistake as to the origin of John Does 1-4's goods, services, or commercial activities.

108. John Does 1-4 are engaging in passing off.

109. Upon information and belief, John Does 1-4's actions are intentional, willful, and malicious.

110. John Does 1-4 passing off violates the Lanham Act, 15 U.S.C. § 1125(a)(1).

COUNT VII
Unfair and Deceptive Trade Practices against All Defendants
N.C. Gen. Stat. §§ 75-1.1 and 75-16

111. Custom Dynamics realleges the preceding paragraphs.

112. John Doe 1 is engaging in counterfeiting and trademark infringement.

113. John Does 1-4 are engaging in copyright infringement and passing off.

114. eBay is engaging in contributory trademark infringement and contributory copyright infringement.

115. Upon information and belief, eBay regularly and serially engages in contributory trademark and copyright infringement and derives substantial revenues from such activities.

116. Defendants are engaging in acts that are unfair and deceptive.

117. Consumers have been harmed by Defendants' bad acts.

118. Upon information and belief, Defendants acted knowingly, intentionally, and willingly.

119. Defendants' acts further constitute unfair and deceptive trade practices under North Carolina law.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully prays the Court that:

- A. the Court find against Defendants on all counts;
- B. the Court award Custom Dynamics its monetary damages suffered due to Defendants' bad acts;
- C. the Court order John Does 1-4 to provide an accounting of all sales of products that were marketed or sold as Custom Dynamics products;
- D. the Court disgorge Defendants' profits obtained from their bad acts;
- E. the Court order the destruction of all John Doe 1's inventory and materials related to the counterfeit CUSTOM DYNAMICS products;
- F. the Court enjoin John Doe 1 and all those acting in concert with John Doe 1 from using CUSTOM DYNAMICS® and EVERYTHING TO LIGHT UP YOUR RIDE!®, and from making any representation that John Doe 1's products originate from Custom Dynamics and freeze John Doe 1's assets;
- G. the Court enjoin John Does 1-4 from using the Turn Signal Image;
- H. the Court order eBay to remove the '294 posting, and the Turn Signal Image from the '300, '333, and '259 listings;
- I. the Court award treble damages;

J. the Court award statutory damages of \$200,000 per counterfeit mark, or, alternatively, find that John Doe 1's counterfeiting was willful and award statutory damages of up to \$2,000,000 per counterfeit mark;

K. the Court award Plaintiff its reasonable attorneys' fees;

L. the costs of this action and prejudgment interests be taxed against Defendant; and

M. the Court grant Plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury be held on all issues so triable.

Respectfully submitted, this the 7th day of April, 2017.

Coats & Bennett, PLLC
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